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TOTAL VEIN SOLUTIONS, LLC

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

TYCO HEALTHCARE GROUP LP d/b/a
VNUS MEDICAL TECHNOLOGIES,

Plaintiff/Counter-defendants,

v.

BIOLITEC, INC., DORNIER MEDTECH
AMERICA, INC., and NEW STAR LASERS,
INC., d/b/a COOLTOUCH, INC.,

Defendants/Counterclaimants.

)
) LEAD CASE NO. C08-3129-MMC
)
) (Consolidated Case No. C08-4234-MMC)

) **STIPULATION AND [PROPOSED]**
) **ORDER REGARDING**
) **CLARIFICATION OF ORDER ON**
) **PLAINTIFF'S MOTION TO STRIKE**
) **DEFENDANT TOTAL VEIN**
) **SOLUTIONS, LLC'S EXPERT**
) **REPORTS**

) Judge: Hon. Maxine M. Chesney

TYCO HEALTHCARE GROUP LP d/b/a
VNUS MEDICAL TECHNOLOGIES,

Plaintiff/Counter-defendants,

v.

TOTAL VEIN SOLUTIONS, LLC, d/b/a
TOTAL VEIN SYSTEMS,

Defendant/Counterclaimants.

1 WHEREAS, Defendant Total Vein Solutions, LLC d/b/a Total Vein Systems (“TVS”)
2 submitted expert reports of both Dr. Wayne Gradman (“Gradman”) and David Draper (“Draper”) on
3 May 7, 2010;

4 WHEREAS, Plaintiff Tyco Healthcare Group LP d/b/a VNUS Medical Technologies
5 (“VNUS”) objected to certain portions of the Gradman and Draper reports as containing untimely
6 opinions on enablement issues;

7 WHEREAS, TVS asserted that such opinions were timely in that said portions of the reports
8 rebutted VNUS’s own infringement expert report;

9 WHEREAS, in accordance with the Local Rules and governing court orders, VNUS and
10 TVS submitted a joint statement to Magistrate Judge James Larson concerning the expert discovery
11 dispute on May 25, 2010 (Docket No. 174);

12 WHEREAS, on June 29, 2010, Magistrate Judge Larson issued an order stating “it is hereby
13 ordered that the TVS expert reports of Dr. Gradman and Dr. Draper are stricken, and TVS is
14 precluded from relying on them in motions or at trial.” (Docket No. 196);

15 WHEREAS, VNUS only sought a court order striking the portions of the Gradman and
16 Draper reports relating to enablement issues and precluding TVS from relying on such opinions;

17 WHEREAS, the Court’s June 29th order does not specify that only the enablement portions of
18 the Gradman and Draper opinions were struck;

19 NOW THEREFORE, it is hereby stipulated and agreed by the respective parties by and
20 through their counsel of record that TVS is not precluded from relying on the portions of the
21 Gradman and Draper reports relating to non-infringement and testimony regarding the non-
22 infringement opinions disclosed in said reports either in motions or at trial.

23 [Signatures on following page].

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1 Dated: July 15, 2010

Respectfully Submitted,

2 BUCHE & ASSOCIATES, P.C.

3
4 By: /s/ John Karl Buche

John Karl Buche (SBN 239477)

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8 ATTORNEYS FOR DEFENDANT TOTAL
9 VEIN SOLUTIONS, LLC d/b/a TOTAL VEIN
10 SYSTEMS

11 Dated: July 15, 2010

DAVIS POLK & WARDWELL LLP

12 By: /s/ Chung G. Suh

13 Matthew B. Lehr (SBN 213139)

14 Suong T. Nguyen (SBN 237557)

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17 ATTORNEYS FOR PLAINTIFF TYCO
18 HEALTHCARE GROUP LP d/b/a VNUS
19 MEDICAL TECHNOLOGIES

20 I hereby attest that I have on file written (or e-mail) permission to sign this stipulation from
21 all parties whose signatures are indicated by a "confirmed" signature (/s/) within this e-filed
document.

22 Dated: 07/15/10

/s/ John K. Buche

John K. Buche

23 PURSUANT TO STIPULATION, IT IS SO ORDERED.

24 Dated: _____

25 HON. JAMES LARSON

26 U.S. MAGISTRATE JUDGE